

BEFORE FACT-FINDING PANEL

Steven M. Bierig (Fact-Finder and Neutral Chair)

Robert E. Bloch (Union Panel Member)

Paul J. Ciastko (Board Panel Member)

In the Matter of the Fact-Finding Between:

THE BOARD OF EDUCATION OF THE )  
CITY OF CHICAGO )  
                      )  
and                   ) Case No. 19-105  
                      ) (Fact-Finding)  
THE CHICAGO TEACHERS UNION, )  
LOCAL 1, AMERICAN FEDERATION )  
OF TEACHERS, AFL-CIO        )

**DISSENTING OPINION**  
**BY UNION PANEL MEMBER ROBERT BLOCH**

I respectfully dissent.

This 75-day statutory fact-finding process and related impasse procedures were drafted into law by the Chicago Board of Education's own attorneys and apply only to the Chicago Public Schools ("CPS"). They are intended to depress contract financial settlements and impede the rights of Chicago Teachers Union members to bargain for adequate learning and working conditions for students and educators. After three rounds of statutory fact-finding in 2012, 2015 and now, fact-finding can also be confirmed as a total failure in identifying possible terms for contract settlements. The Neutral Fact-Finder's recommendation simply *ignores* 85% of the disputed issues jointly submitted to the fact-finding panel – making recommendations on only three of the 21 disputed issues submitted to the panel. And of the three issues the report addresses, the recommendation fails to find a fair balance of the parties' interests and is therefore of no use whatsoever to conclude a labor contract and avoid a strike by CPS educators.

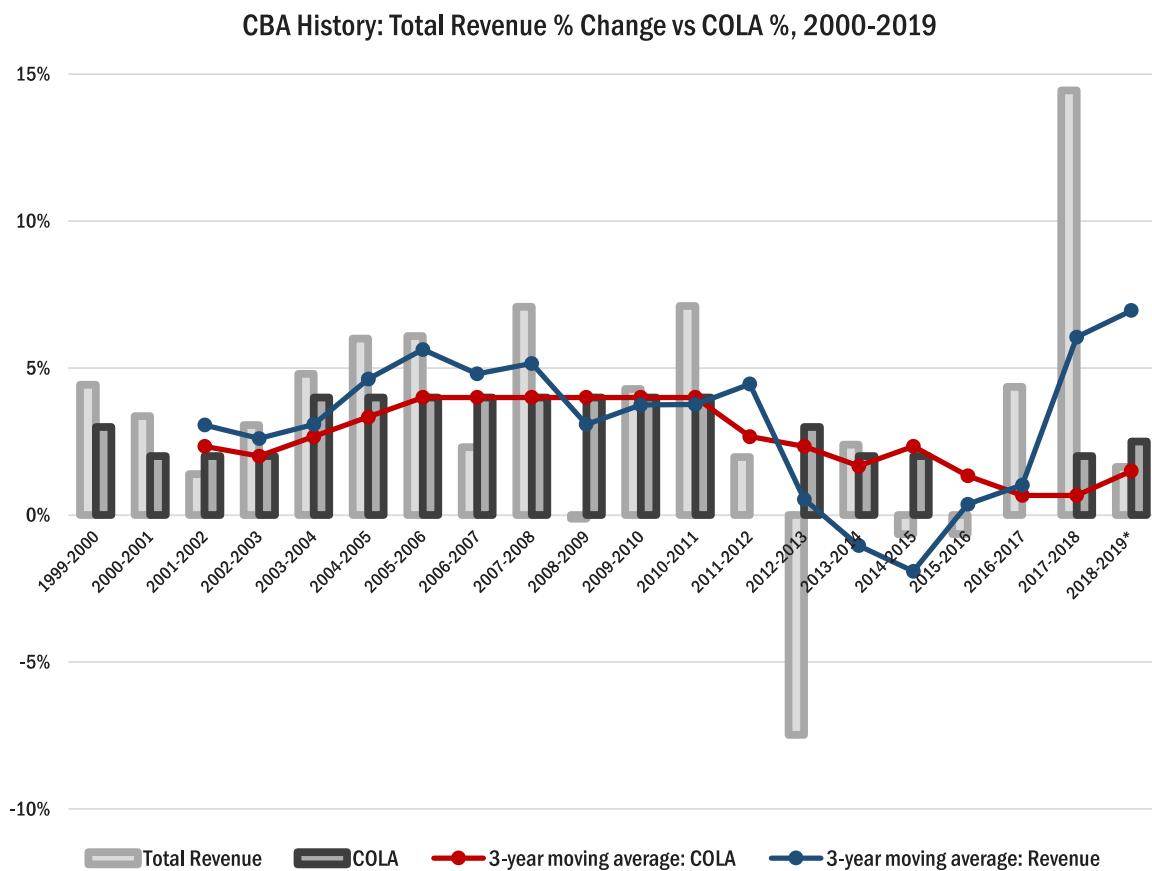
## **Neutral Fact-Finder's Economic Recommendations are Insufficient and Fail to Account for CPS's Dramatic Infusion of New Funding**

Let's start with the three issues the Neutral Fact-Finder's report does address: salaries, employee health insurance contributions, and length of contract term.

### **Salaries**

For eight consecutive years, from 2003 through 2010, the Chicago Public Schools (“CPS”) negotiated and paid 4% annual cost of living (COLA) increases to its teachers, enabling CPS teachers to become among the best paid in the country’s largest urban school districts.

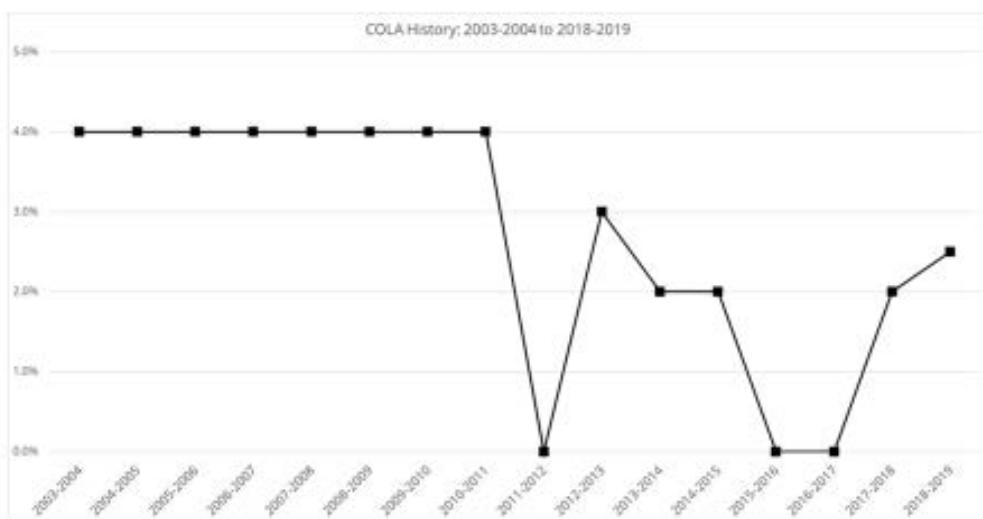
But in 2011, the bottom fell out of CPS finances – due to its own mismanagement and lack of State financial support – and in the eight consecutive years from 2011 to 2019, the annual cost of living increases have averaged a paltry 1.4% per year.



The above chart shows the dramatic reduction in CPS revenues from 2011 to 2017, and the associated reduction in cost of living increases paid to its teachers. In 2011, CPS invoked an obscure contract clause (since removed) allowing it to cancel the 2011 scheduled 4% cost of living increase. In the ensuing contract negotiations of 2012 and 2015, CPS staff suffered due to CPS's drastically reduced revenue, from which CPS didn't fully recover until 2017.

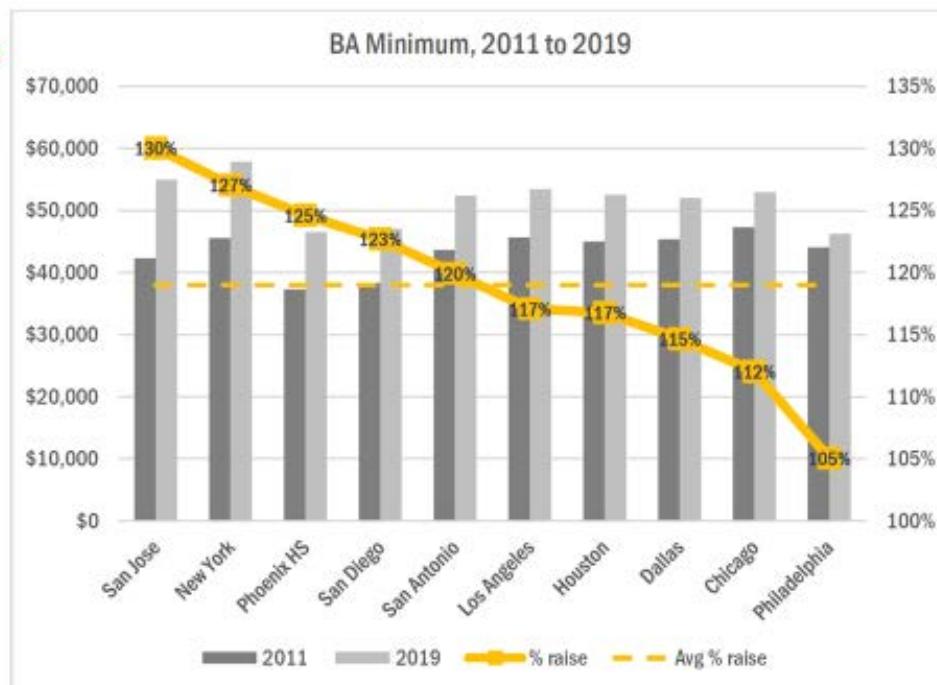


## CPS Teacher COLAs 2003-2019



The above chart submitted to the Fact-Finding panel details the annual cost of living (COLA) increases in each contract year over the 16-year period 2003-2019. After eight years of regular 4% COLA increases (2003-2010), since 2011 teachers have endured eight years of average 1.4% COLA increases – including three years of *zero* cost of living increases – despite annual increases in the actual cost of living, including a 19.2% increase over the same period in the cost of Chicago housing. By law, CPS teachers must live within the Chicago city limits.

As a direct result of eight years of paltry increases, total pay for CPS teachers has fallen dramatically relative to other school districts in the 10 largest American cities.



The Illinois Educational Labor Relations Act (“IELRA”), which governs this fact-finding process, directs that salaries for CPS staff be compared to salaries of educators in school districts in the 10 largest U.S. cities. 115 ILCS 5/12(a-10)(I). The submitted evidence shows that, from 2011 to 2019, increases to starting pay for CPS teachers ranked ninth out of the ten largest U.S. cities, and only ahead of Philadelphia, which was essentially bankrupt.

Critically, four of these school districts paying higher increases than CPS (Phoenix, San Antonio, Houston, Dallas) are located in states with *no teacher collective bargaining rights* – teachers are simply given whatever the school district chooses to pay. Starting pay for CPS teachers, which used to be one of highest in major urban centers, has now fallen to mid-pack at best. This reduction in compensation relative to other large school district applies across the board to include CPS teachers with more years of experience and more post-graduate education.

But low pay hasn't only afflicted CPS teachers. The CPS paraprofessionals (such as teaching assistants, office staff and health service nurses) have suffered such low pay that most of their children are now eligible for free or reduced lunch under federal poverty guidelines.



## CPS Paraprofessional Salaries:



When CPS paraprofessional salaries are viewed against the federal government's 2017 poverty guidelines for a family of four, nearly a quarter of CPS paraprofessionals earned so little that their children are eligible for free school lunch, and approximately two-thirds of them would have children who qualify for a federally subsidized reduced-price school lunch.

The failure by CPS to maintain salaries for its teachers and paraprofessional that keep pace with educators in the largest cities, or even sufficient to keep its staff out of poverty, is a disgrace.

### CPS's Unprecedented Capital Infusion

In 2017, the Illinois General Assembly enacted Public Act 100-0465, the Evidence-Based Funding for Student Success Act, creating an evidence-based education funding model solving CPS's

structural deficit and significantly increasing the level of State funding that CPS receives. In 2017 and 2018, the State also passed additional laws to shore up funding for Chicago teacher pensions and authorizing CPS to collect more tax revenue.

Altogether, CPS has seen an increase in *annual revenues* now well exceeding \$1 billion commencing in fiscal 2017, representing more than a 20% increase to its annual budget.

CPS publicly acknowledges an *increase in its annual funding of \$898 million* between 2016 and 2018. This includes the following *new sources of revenue*:

Fiscal 2017:

- \$250 million from the creation of a new tax levy created for the Board to meet its pension contribution obligations;
- \$102 million from the new Equity Grant contained within the general state aid (GSA) revenue CPS receives from the State of Illinois under the evidence based statutory funding formula, which is held harmless under P.A. 100-465;
- \$74 million in GSA hold harmless funds, which will continue under P.A. 100-465; and
- \$28 million increase to the Early Childhood Education Grant.

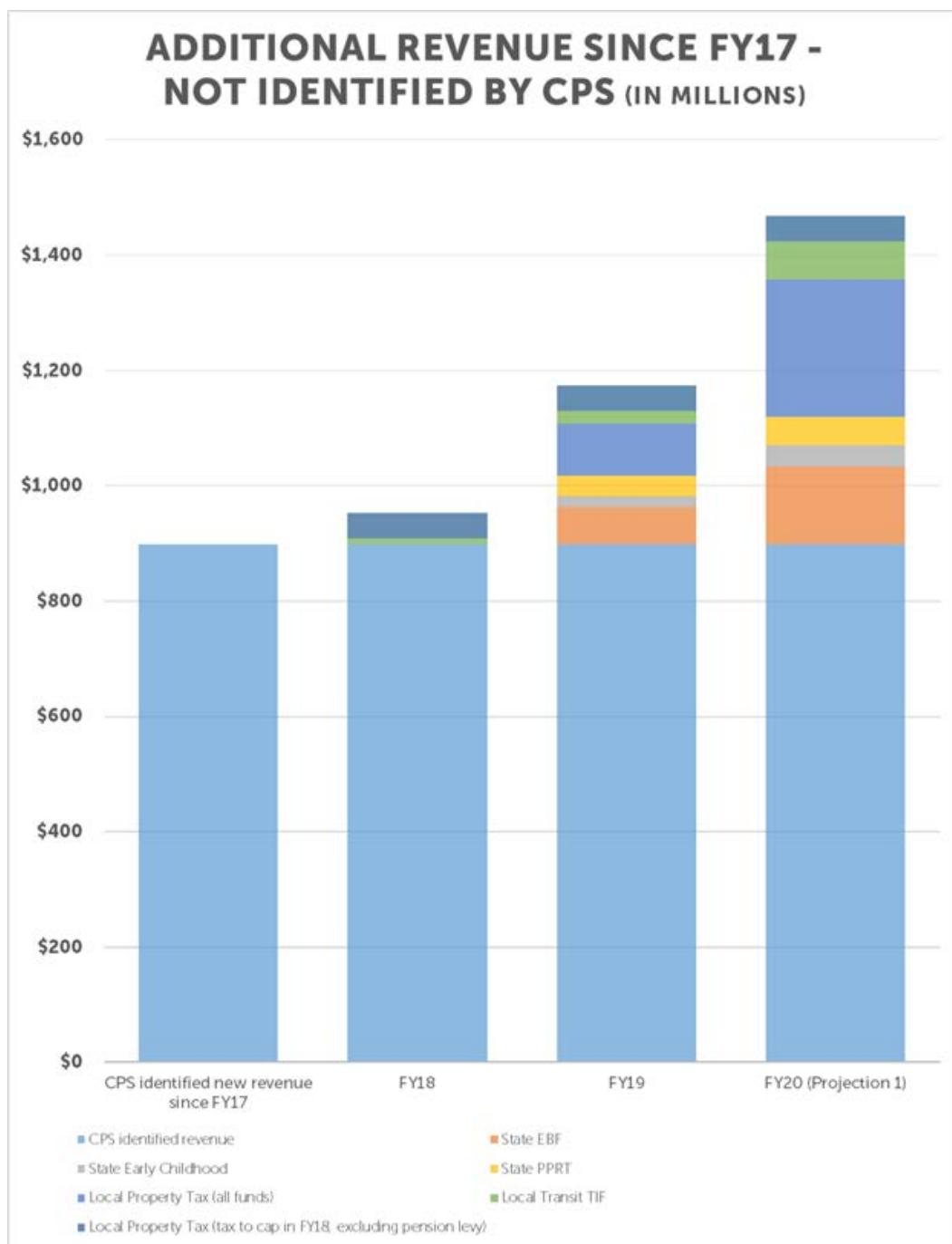
Fiscal 2018:

- \$221 million from the State assuming responsibility for CPS's normal pension contribution costs; and
- \$130 million from the new property tax levy, which will continue to grow based on equalized assessed values (EAV) of property increasing;
- \$70 million in new revenue from the State under the evidence based statutory funding formula described above; and
- \$19 million in additional early childhood funds and \$4 million in “other” additional revenue.

CPS has also received other additional revenue increases since 2018:

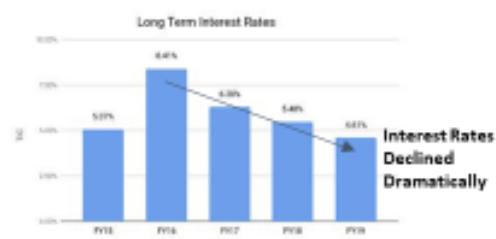
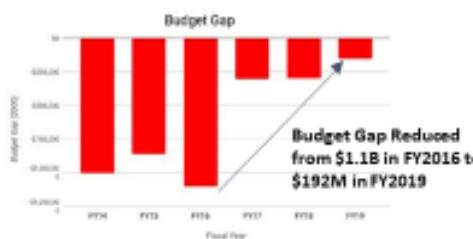
- In 2018, CPS started receiving local revenue from the Transit Tax Increment Financing district (TIF) in the amount of \$9.3 million in 2018 and \$21.3 million in 2019.
- State revenues from the statutory Evidence Based Funding Formula described above increased by \$65 million in 2018-2019 over 2017-2018, and early childhood funding increased by another \$19 million in 2019.
- Property tax revenues received by CPS increased by \$90 million.
- The Personal Property Tax Replacement Tax increased by \$36 million.

The chart below shows how CPS's total revenues have increased more than *\$1.4 billion per year* since fiscal year 2017 (2017-18), well beyond the \$898 million acknowledged by CPS:



CPS's own presentation to the Fact-finding panel, confirms its return to financial stability in just a few years, thanks to the State of Illinois finally stepping up to help fund public education in Chicago.

## CPS Finances are Improved – By the Numbers



The above chart, presented to the Fact-Finding panel by CPS, Exhibit 1, shows CPS's dramatic improvement since fiscal 2017 in closing its budget gap, restoring healthy cash reserves, reducing cash borrowing, and paying lower interest rates on its bonds. CPS has also increased its annual capital budget to *nearly \$1 billion* this past fiscal year. And thanks to special pension relief from the State, CPS projects that its annual payments to the Chicago Teachers Pension Fund will be dramatically reduced starting next year and the pension fund will be fully self-sufficient by 2031.

And now – after 8 years of minimal or no cost of living increases for teachers, paraprofessional salaries so low that most qualify for federal poverty benefits, and with CPS enjoying dramatically improved funding – it’s time to restore fair compensation for CPS teachers and staff.

One of the critical statutory factors for setting the recommended settlement is “the employer’s financial ability to fund the proposal based on existing available resources.” 115 ILCS 5/12(a-10)(4)(F). Though CPS cried poor over the last eight years (2011-2018), it certainly isn’t poor anymore. It can fund annual increases at least as high, if not higher, than the 4% annual cost of living allowances it paid for the eight consecutive years of 2003-2010. It can also compensate its staff for the 8 years of substandard compensation they have endured.

But the Neutral Fact-Finder appears to have ignored all of these critically important facts. Rather, he bases his recommendation on *only two factors*: his estimates of the expected rate of economic growth and inflation over the next five years (Report at 101-104). Though his recommendation assertedly includes an unspecified wage increase “beyond inflation” (Report at 103), he doesn’t quantify that increase, nor does he take account of any other critical statutory factors – including the historically higher salary increases paid by the other largest school districts and CPS’s now robust ability to fund the contract.

### **Health Insurance**

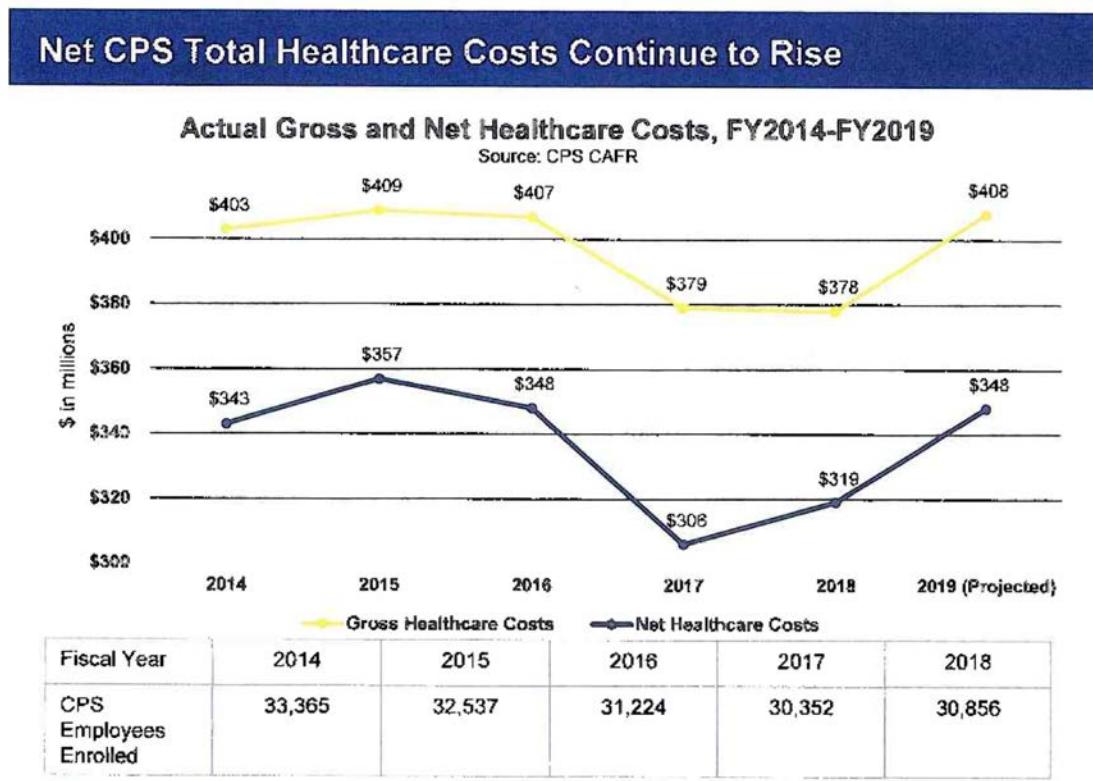
CPS employees pay a percentage of their salaries toward their health care costs. This means that, as salaries increase, so too does the amount they pay toward the cost of health care.

On January 1, 2019, in a disputed action now pending in litigation, CPS increased the percentage rate that its employees must pay for their health care, resulting in an increase of

25% to 61% in actual employee contributions depending on which plan the employee selected and number of family members covered. CPS proposed to the Fact-finding panel to increase the rate of employee contributions again, which in application would increase employee contributions by a whopping 42% to 75% over the 2019 increases, and in some cases even more. Finally, it proposes to remove salary caps on the maximum contributions – which alone will result in *another* 44% increase in health care contribution payments for employees at the top of the pay scale. These increases generally double the cost of health care for CPS employees.

The Union has proposed to roll back the 2019 increases and leave health care contribution rates unchanged from the rates in effect in 2018.

Why leave employee contribution rates unchanged from the rates in effect in 2018? The answer is simple: CPS health overall care costs are essentially *unchanged* since 2014, as acknowledge by CPS in its Fact-Finding Exhibit 43:



Due to aggressive joint efforts to control health care costs by both parties, CPS's total healthcare costs in 2014 were \$403 million and CPS projects its total healthcare costs in 2019 will be \$408 million. CPS's net cost of health care – after receipt of employee contributions – has also held steady, from \$343 million in 2014 to \$348 million in 2019. Thus, it has presented no evidence to suggest that health care costs are expected to soon *double* over the next contract term.

Notwithstanding that CPS's healthcare costs are fully under control, even if no change is made in the rate that employees contribute to health care, employee contributions will nevertheless increase automatically at least by the amount of COLA added to everyone's salary. Even under the Neutral Fact-Finder's recommended salary settlement, with no change in the rate of contributions, actual contributions paid for health care will increase by 16% without any other adjustments. And this does not even account for individual employee scheduled increases in pay based upon longevity steps and additional post-graduate education. Thus, there is no basis shown for increases in the percentage of salary that employees must pay for their healthcare.

The Neutral Fact-Finder recommends a 1% increase in the rate of employee contributions (one-half of one percent less than CPS proposes) and removing the salary cap on contributions. Other than stating, without reference to any factual basis, that "health care costs will continue to rise" (Report at 104), he makes no finding whatsoever that the rate of increase will exceed the built-in increases at least equal to the 16% COLA he recommends. An increase in the percentage rate paid by employees is justified only if the cost increases would exceed the automatic increases employees must already pay. The Neutral Fact-Finder regrettably fails even to consider CPS's own acknowledgement in its Exhibit 43 that due to successful cost control measures CPS's health care costs are *essentially unchanged* today from its costs in 2014.

## **Contract Term**

CPS seeks a 5-year contract term, and the Union seeks a 3-year contract term. The Neutral Fact-Finder recommends a 5-year contract term, though his rationale is baffling. Among other things, he finds that a 5-year term “avoids the expiration of the contract during the campaign period preceding the mayoral and School Board elections” (Report at 100-101). But this statement is factually incorrect. The next Chicago mayoral election will be in four years, not three, so the mayoral election is a non-factor under either a 3-year or 5-year contract term. Further, the labor contract is negotiated with the Chicago Board of Education, not the Mayor, and there is no statutory basis whatsoever to decide any issues in Fact-finding based on who is running for mayor and when. Lastly, the Chicago Board of Education’s school board isn’t elected. It is appointed. Though legislation is pending to create an elected school board, no one knows when it will occur or when elections will be conducted.

## **Neutral Fact-Finder’s Failure to Consider 18 of the 21 Issues Jointly Presented to Him**

The parties jointly submitted 21 disputed issues to the Fact-Finder. The list of issues, drafted by CPS’s own attorneys, is appended to this dissent. The statute is clear that the Fact-finding panel *must* issue a recommendation on *each* disputed issue. It explicitly requires that the fact-finding report “contains advisory findings of fact and recommended terms of settlement for *all disputed issues* and that sets forth a rationale for each recommendation.” (emphasis supplied) 115 ILCS 5/12(a-10)(4) (See also Report at 10).

Notwithstanding this clear statutory directive, only three of 21 issues are addressed in the report. The Neutral Fact-Finder has ignored such crucial issues affecting CPS as:

- Early Childhood Education
- Caseload limits for teachers serving students with disabilities
- Smaller class sizes
- Teacher evaluations
- Sustainable Community Schools, providing critical wraparound services
- Career and Technical Education, providing skills training to students not opting for college
- Sanctuary Schools, protecting CPS students and staff from ICE incursions

These are among the critical issues facing CPS students, their families and educators, and will be necessary ingredients in any labor contract concluded between the parties. By focusing only on three economic issues, the Neutral Fact-Finder's report gives the parties no assistance on critical issues necessary for an agreement.

## **10 Issues Remanded to the Parties**

The Neutral Fact-Finder acknowledges the statutory obligation to issue a recommendation on 10 of the 18 issues he has ignored, and he acknowledges that the parties' presentations on these issues are "thoughtful and complete" (Report at p. 105), but he has nevertheless remanded the issues to the parties to find their own way. The Union is fully prepared to bargain these issues but regrets the 75 days lost in this statutorily imposed fact-finding process, which could have better been used to negotiate an agreement.

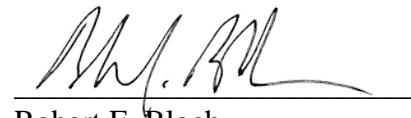
## **8 Issues Where Jurisdiction is Declined**

The Neutral Fact-Finder asserts that eight of the issues jointly submitted to him for determination are outside of his jurisdiction, citing IELRA Section 4.5, which identifies issues that are not mandatory bargaining subjects. 115 ILCS 5/4.5 (Report at 106-08). While it is correct that Section 4.5 renders some, *but not all*, of these eight issues outside the Fact-Finder's jurisdiction under one section of the IELRA's impasse procedures, he has overlooked another IELRA section that directs how issues covered under Section 4.5 are to be resolved. Section 12(b) of the Act, which governs resolution of all disputed issues covered by Section 4.5, requires that "the parties shall submit the dispute or impasse to the dispute resolution procedure agreed to between the parties" under which the dispute resolution panel may issue "advisory findings of fact and recommendations." 115 ILCS 5/12(b). This fact-finding proceeding, of course, is the dispute resolution procedure to which the parties have mutually submitted their 21 disputed issues, including the eight issues that the Neutral Fact-Finder asserts are covered under Section 4.5. Again, 75 days have been wasted on a process that yielded nothing to assist the parties.

## **Conclusion**

We are now into our third contract cycle under the CPS-drafted law requiring the parties to submit to a 75-day fact-finding process, and I have served as the Union's panel member throughout. Regrettably, this law is a failure. Fact-finding Reports have never addressed all, or even most, of the key issues in dispute. They have not produced recommendations that were incorporated into the parties' final contract settlements. And they have not served to bridge the gap in the parties' positions. The statute's rigid evaluative criteria – which have been imperfectly applied, at best – constrain the fact-finding panel from providing recommendations

that are actually helpful to the parties. Further, no Fact-Finding Panel has yet been able to address all the complex issues arising in the Chicago Public Schools that the law requires. The parties would be far better served to scrap both the IELRA's fact-finding process and Section 4.5, which hinder rather than help the bargaining process, and simply allow CPS and the Chicago Teachers Union to negotiate their agreement.



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Robert E. Bloch  
Union Panel Member

August 23, 2019

June 6, 2019

### **LIST OF DISPUTED ISSUES FOR FACT-FINDING**

1. Term of Agreement
2. Salaries (Article 36, Appendices A and F)
3. Sustainable Community Schools (Article 12)
4. Teacher Preparation Time and Professional Development (Contract Articles 4, 5, 6, 19, and 25)
5. PSRP Issues (Article 9 and Appendix I)
6. Teacher Supply Money (Article 7)
7. Early Childhood Education (Article 17)
8. Sports (Article 13)
9. Career and Technical Education (CTE) (Article 18)
10. Clinicians and Counselors (Articles 20 and 21)
11. Paid Time Off (Article 26)
12. Special Education (Article 21)
13. Substitute Teachers (Article 27)
14. Teacher Evaluation (Article 39)
15. Paperwork, Lesson Plans, and Testing (Articles 44-21, 44-30, and 44-32)
16. Sanctuary Schools/Sanctuary Employer (Article 46-5)
17. Affordable Housing (Article 46)
18. Staffing
19. Class Size (Article 28)
20. Health Care (Article 32, 33, and Appendix E)
21. School Closings and Charter Expansion Moratoriums (Side Letters—Proposals 52 and 53)

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